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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2120 OF 1999

Maharashtra State Road Transport Corporation ... Petitioners

V/s

Shri Pandurang Balwant Kadam ... Respondent

Mr. G.S.Hegde for the petitioners.

None for the respondent.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 5TH SEPT., 2007.

ORAL JUDGMENT:

1. The petitioners have challenged the order of the Labour Court dated 28.7.1997 in Complaint (ULP) No. 105 of 1996. The petitioners have also challenged the order passed by the Industrial Court in Revision Application (ULP) No.288 of 1997 preferred by the petitioners. The Labour Court has directed the petitioners to reinstate the workman as a Driver with continuity of service but without back wages.

2. Admittedly, the respondent workman was employed as a Driver with the petitioners from 22.12.1992. On

16.12.1993, within less than a year of his joining service, the respondent workman committed an accident in which the pillion rider of a moped died and the rider sustained severe injuries. A charge-sheet was issued to the respondent workman on 15.4.1994 for this incident. An enquiry was instituted against him by the petitioners. The enquiry officer found the respondent workman to be guilty of the misconduct alleged against him and accordingly submitted his report. On the basis of this report, the petitioners dismissed the respondent workman from service.

3. Aggrieved by the decision of the petitioners, the respondent workman approached the Labour Court by filing Complaint (ULP) No. 105 of 1996 under Section 28 of the M.R.T.U. & P.U.L.P. Act read with Items 1(a), (b), (c), (d), (f) & (g) of Schedule IV of the Act.

4. Neither party led any evidence before the Labour Court. The respondent workman admitted that the domestic enquiry conducted against him was held fairly and properly, procedurally. However, the respondent workman challenged the findings of the enquiry officer as they were perverse. The Labour Court has held that the findings of the enquiry officer are not perverse and has accepted the same. The Labour Court accepted the

finding of the enquiry officer that the respondent workman was guilty of the alleged rash and negligent driving of the bus, thus causing the accident. The Labour Court considered the fact that the workman, while negotiating an "S" turn has swerved to the extreme right of the road thereby leaving no space for the Moped rider, resulting in the accident. The Labour Court has found that the bus was driven at a speed of 30 kilometre per hour and, therefore, the respondent workman was not speeding. However, because of his negligent driving while negotiating the "S" turn he committed the accident. The Labour Court then considered whether the punishment of dismissal was proper. In the opinion of the Labour Court, the punishment of dismissal was too severe and harsh considering the misconduct committed by the respondent workman. The Labour Court held that the past service record of the respondent workman was good and, therefore, a lenient view should be taken in the matter by reinstating the workman with continuity of service but without back wages.

5. The Industrial Court upheld the findings of the Labour Court and confirmed the order.

6. Mr. Hegde, the learned advocate appearing for the petitioners submits that the Labour Court and the

Industrial Court have both erred in taking a lenient view in the matter by reinstating the respondent workman with continuity of service. He submits that the bus was driven in a reckless manner by the respondent workman thereby causing the accident. The learned advocate also submits that the Labour Court is incorrect in recording a finding that there was no blemish in the past service record of the respondent workman. He points out that the respondent workman had committed the accident within a year of his employment with the petitioners as a driver. In such circumstances, according to the learned advocate, the Courts below ought not to have been so sympathetic.

7. The findings of the Labour Court that the respondent workman had committed a misconduct by driving the bus in a reckless manner, thus causing the accident, have not been challenged by the respondent workman. Therefore, it must be accepted that the accident occurred on account of negligent and careless driving of the respondent workman. There is evidence on record to indicate that while negotiating the "S" turn, the respondent workman was unable to control the bus and swerved to the right side of the road, leaving no space for the Moped driver who was riding in the opposite direction. The pillion rider died as a result of the

accident and the moped driver was severely injured.

8. In these circumstances, in my view, both the Courts below have erred in taking a lenient view and directing the petitioners to reinstate the respondent workman. If the respondent workman has committed such a severe accident within one year of his service with the Corporation, there is no warrant to interfere with punishment imposed by the Corporation. The misconduct is not minor or technical in nature for which a shockingly harsh punishment has been imposed. A life has been lost on account of negligence of the respondent workman. In such circumstances, the punishment of dismissal is commensurate with the misconduct committed by the respondent workman.

9. In the result, the impugned orders of the Labour Court and the Industrial Court are set aside.

10. Rule made absolute. No order as to costs.

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